

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

GREGORY ANDERSON §
VS. § ACTION NO. 4:11-CV-317-Y
MICHAEL J. ASTRUE, §
Commissioner of Social Security §

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

On August 7, 2012, the United States magistrate judge issued his findings, conclusions, and recommendation in this case in which Plaintiff protests the denial of his claim for supplemental security income under Title II of the Social Security Act. The magistrate judge recommended that the decision of the Commissioner of the Social Security Administration ("the Commissioner") denying Plaintiff's claim be reversed and remanded for further administrative proceedings. The magistrate judge concluded that decision of the Commissioner's Administrative Law Judge ("ALJ") was ambiguous as to whether he employed the correct standard of severity, as enunciated in *Stone v. Heckler*, 752 F.2d 1099, 1104-05 (5th Cir. 1985), at the second step of the five-step sequential-evaluation process for determining whether a claimant is disabled. Although the ALJ determined that Plaintiff's lumbosacral pain and hypertension were severe, because he concluded that Plaintiff's pulmonary condition was not severe without clearly using the correct severity standard, and because the record contained medical opinion evidence that Plaintiff also had vocational limitations as a result of his pulmonary condition, the magistrate judge concluded that remand was required.

The magistrate judge's order gave all parties until August 21 to serve and file with the Court written objections to his proposed findings. The Commissioner objected, asking this Court to reject the findings of the magistrate judge and affirm the Commissioner's decision. On August 28, Plaintiff filed his response to the Commissioner's objections, in which Plaintiff contends that the magistrate judge's decision was correct.

After careful review of the magistrate judge's findings, the objections and response thereto, the record in this cause, and the applicable law, the Court concludes that the magistrate judge's decision is correct. The Commissioner's objections make the same arguments that were addressed in detail in the magistrate judge's findings. This Court, after de novo review, concludes that magistrate judge's findings and conclusion are consistent with the Fifth Circuit's decision in *Stone* and the majority of case law from this district. As a result, the Commissioner's decision should be reversed and remanded for the reasons stated in the magistrate judge's findings.

It is ORDERED that the findings, conclusions, and recommendation of the magistrate judge should be and are hereby ADOPTED. The decision of the Commissioner is REVERSED AND REMANDED for further administrative proceedings consistent with the magistrate judge's opinion.

SIGNED September 28, 2012.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE